

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs June 13, 2008

MIKE SETTLE v. RICKY BELL, WARDEN

Appeal from the Circuit Court for Davidson County
No. 07C-2068 Amanda McClendon, Judge

No. M2007-02743-COA-R3-CV - Filed October 28, 2008

Mike Settle, a prisoner, was apparently convicted in 1996 of a felony committed while on parole.¹ In 2007, he filed a petition for writ of habeas corpus, alleging procedural violations by the Board of Paroles purportedly affecting the date of his eligibility for parole. The trial court dismissed the case *sua sponte* because Mr. Settle failed to attach a copy of his felony conviction to his petition, as required by Tenn. Code Ann. § 29-21-107 (2000), and indeed “failed to include any part of the record in the case in which he was convicted.” Mr. Settle appeals. We affirm the court’s judgment, though on different grounds. We find that Mr. Settle’s complaint, on its face, simply does not fall within the ambit of habeas corpus relief. Dismissal on the pleadings was therefore appropriate.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and SHARON G. LEE, SP.J., joined.

Mike Settle, appellant, pro se.

No appearance on behalf of the appellee.

OPINION

Whether to grant a petition for habeas corpus relief is a question of law that we review *de novo*. *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). If the petition fails to make out a claim that would, if true, entitle the petitioner to habeas corpus relief, the writ may be refused without a hearing. Tenn. Code Ann. § 29-21-109 (2000); *Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004). Where “no claim for relief is stated by a party, a court may properly dismiss the action, either on motion or *sua sponte*.” *Donaldson v. Donaldson*, 557 S.W.2d 60, 62 (Tenn. 1977). “The grounds upon which habeas corpus relief will be granted are narrow.” *Dixon v. Holland*, 70 S.W.3d 33, 36

¹ We say “apparently” because the record contains no information about the underlying proceedings.

(Tenn. 2002). Such relief is “available to a defendant only when the judgment is void on its face or the prisoner’s sentence has expired.” *Hart*, 21 S.W.3d at 903.

Mr. Settle does not allege that the judgment in his case was void on its face, nor that his sentence has expired. Instead, he alleges violations of his constitutional rights stemming from purported procedural violations by the parole board. It appears to this court that Mr. Settle’s allegations are largely based upon a misreading of Tenn. Code Ann. § 40-28-123 (2006) and upon challenges to discretionary actions, but in any event, a habeas corpus petition is not the proper vehicle for his complaint. “The sole remedy available when a prisoner alleges that the Board of Paroles has acted improperly is to file a writ of certiorari in the Chancery Court of Davidson County.” *Ferrell v. State*, No. 01CO1-9610-CR-00454, 1997 WL 578999 at *1 (Tenn. Cr. App. M.S., filed September 19, 1997) (citing *Brigham v. Lack*, 755 S.W.2d 469, 471 (Tenn. Cr. App. 1988)). Moreover, the relief requested by Mr. Settle cannot be entertained in a habeas corpus case. “The only relief a state court can grant in a habeas proceeding is immediate release from confinement.” *Id.* (citing *State v. Warren*, 740 S.W.2d 427, 428 (Tenn. Cr. App. 1986)). In his petition, Mr. Settle asked the trial court to order the “restoration of sentence credits for six (6) years making him eligibility [sic] for consideration of parole[.]” On appeal, he asks this court to “fashion habeas relief to accelerate his current projected [parole] consideration date of February 5, 2011” by “four (4) years.” Yet a request to be made *eligible* for parole – at the parole board’s discretion – is not the same as a request for “immediate release from confinement.” “[R]elease eligibility does not amount to an entitlement to immediate release.” *Leming v. State*, No. 03C01-9603-CC-00119, 1997 WL 198782, at *2 (Tenn. Cr. App. E.S., filed April 22, 1997). Accordingly, this simply is not a habeas corpus case. For all of these reasons, we hold that the trial court acted appropriately in dismissing Mr. Settle’s petition for habeas corpus relief.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Mike Settle. This case is remanded to the trial court for collection of costs assessed below, pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE